IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Tr.P(C).No. 173 of 2007()

OS.3/1999 of D.C & SESSIONS COURT,TRIVANDRUM
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PETITIONER

J.R.VINCENT, S/O.JESSY, T.C.11/326,
NANTHANCODE WARD, KOWDIAR VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.BALAGOVINDAN
SRI.M.R.SASITH

RESPONDENT:

JUSTUS SARASAM,
S/O.MANUEL SARASAM,
VALIYAVILAKATHU PUTHEN VEEDU,
KAVALAKULAM, NEYYATTINKARA.

BY

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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Tr.P.(C) No.173 OF 2007

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Dated this the 26th day of July, 2007

JUDGMENT

This transfer petition is filed to call for the records in O.S.No.3 of 1999 pending before the District Court, Thiruvananthapuram and consider the same in accordance with Section 24(1)(b)(i) of the Code of Civil Procedure. O.S.No.3 of 1999 is a contentious suit which has been converted as an original suit in a Testamentary Case (O.P).No.90 of 1995. The brief facts of the case are a father had one son and other daughters. The son filed a case for a declaration and injunction. There was a finding in his favour by the appellate court to the effect that as per the custom ladies are not entitled to any share. By the time it reached this court and a decision was rendered in ***Mary Roy v. State of Kerala(1986 KLT 508)*** and therefore the court found that he can be only a co-owner and therefore he is not entitled to declaration as prayed for. Now a testamentary O.P. is filed on the basis of a Will alleged to be executed by the father in his favour. I am not stating anything on merits. But needless to say when an O.P. is filed and a Will is produced, the court is bound to consider the truthfulness or otherwise of the

Will and decide the case in accordance with law.

Therefore it cannot be said that there will be any conflict of decision between the one rendered by the High Court in the earlier case and and the case which is pending before the court below now. It is true that the alleged Will has come into light after two decades. These are all matters which the court below has bestow its best attention. But it does not require a transfer and therefore the transfer petition is dismissed. But it is made clear that the court below is to dispose of the case, as expeditiously as possible, for the reason that the petitioner herein has been litigating before courts almost 3 decades and the legal representatives of Jassai Sarasam requires some consideration . If really any issue that can be considered under Order 14 Rule 2 that also may be considered by the court after hearing both sides.

Tr.P.(C) is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-